IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 755 of 2000()

MC.192/1998 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA
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REVN. PETITIONER: PETITIONER

THAHIRA, D/O. MOOSA HAJI,
PALLIKKANATH THAZHEKUNIYIL
HOUSE, VILLIAPPALLY AMSOM, DESOM,
VADAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.R.PARTHASARATHY

RESPONDENT: RESPONDENT

MUHAMMED ALI, S/O. KUTTIALI,
KUNNOTH HOUSE, VILLIAPPALLI AMSOM,
DESOM, VADAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.P.K.VIJAYAN
BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.755 of 2000

Dated this the 20th day of August, 2007

O R D E R

The petitioner in M.C.No.192/98 in the file of the Judicial First Class Magistrate Court, Vadakara who had initiated proceedings with respect to the offence under Section 3 of the Muslim Woman (Protection of Rights on Divorce) Act has sought for setting aside the order of the court below.

2. It is her grievance that the amount granted by the court below is too low taking into consideration that the income of the respondent, the status of the parties and needs of the petitioner. It is submitted that she has given birth to a child and that she is maintaining the child as well.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 and 2 and Exts. P1 to P6. The defence examined RW1 and got marked Exts. D1 to D5.

4. It is the case of the petitioner that the marriage was solemnised on 17.8.1995 and was dissolved after the pronouncement of the talak on 27.9.1998. The child then was aged 2½ years. She has got a case that 85 sovereigns of gold ornaments

was taken away by the respondent for starting a business. The other contention is that he is working in a construction company in the Middle East and is getting a monthly salary of Rs.25,000/- apart from the landed property from which he is getting an annual income of Rs.25,000/-. Along with the amounts claimed with respect to the ornaments, cash etc. she has also claimed a sum of Rs.2,50,000/- towards the future maintenance. Altogether a sum of Rs.7,34,560/- is claimed. The respondent has denied all their allegations and contended that he is getting only salary of Rs.6,000/- and after deducting expenses he will get only a sum of Rs.1,000/- per month.

5. PWs' 1 and 2 are the petitioner and her father. It is the version of PWs' 1 and 2 that PW2 is working abroad. The father of the petitioner was working in Baharin for about 26 years and thereafter he returned and started business in Kerala. On the other hand, the respondent did not testify. It is his father who was testified on his behalf. RW1, the father has stated that the respondent is getting only a salary of Rs.5,000/- per month. The court below has held that a sum of Rs.1,500/- is sufficient for maintenance during the Iddat period and a sum of Rs.90,000/-

towards the future maintenance. I find that in the circumstances the order of the court below granting maintenance at the above rates appears to be too low. In the absence of any contra evidence by the respondent and non production of any document as to his income which he alone would be in possession, I find that his case that he is getting only a sum of Rs.6,000/- per month cannot be accepted as such. Considering the fact that the version of the petitioner that her father was working abroad for more than 26 years has not been rebutted it is to be treated that she is having a rich family background. The same has also be taken into consideration.

6. In the circumstances, it appears that a sum of Rs.3,000/- per month as maintenance during the Iddat period i.e., Rs.9,000/- as maintenance during the Iddat period and Rs.1,80,000/- as reasonable and fair provision and maintenance would be reasonable. The order of the court below is modified accordingly.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl

K.R.UDAYABHANU, J

Crl.M.C.No.11683/2002

ORDER

7th August 2007